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No. 93-1119

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

CLARENCE O. GESCHKE and IRENE M. GESCHKE,
Petitioners,

v.

LASALLE NATIONAL BANCORP, INC.,
LASALLE NATIONAL BANK,
UNION REALTY MORTGAGE COMPANY, INC.,
CHICAGO TITLE & TRUST COMPANY, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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Respondents LaSalle National Bancorp, Inc., and Union Realty Mortgage Co., Inc.,[1] represent to the Court as follows:

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[1] The parent company of respondent LaSalle National Bancorp, Inc. is LaSalle National Corporation. The respondent Union Realty Mortgage Co., Inc. is a wholly owned subsidiary of respondent LaSalle National Bancorp, Inc. LaSalle National Corporation's parent is ABN AMRO, North America, Inc. The parent of ABN AMRO, North America, Inc. is ABN AMRO Bank, N.V. LaSalle National Bank is a party to the proceedings in this case solely by virtue of its formerly having been a trustee. LaSalle National Bank is a wholly owned subsidiary of LaSalle National Bancorp, Inc.

1. The petitioners, the Geschkes, claim their petition for a *writ of certiorari* should be granted because the Seventh Circuit Court of Appeals has sanctioned a departure by the district court which was "so far . . . from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision."

2. The rulings which the petitioners allege support their position do not demonstrate any extraordinary departure from the accepted and usual course of judicial proceedings. The petitioners complain about two rulings. First, the district court's decision to conduct a bifurcated trial, trying first the issue of the alleged vicarious liability of one defendant, and then proceeding to try the liability of the other defendant for its alleged wrongful acts. Bifurcated trials are authorized by Federal Rule of Civil Procedure 42(b). The second complaint relates to the district court's ruling on discovery matters and the fact that the court held an evidentiary hearing to enable it to make its ruling. District courts rule daily on discovery matters and it is commonplace for them to hold evidentiary hearings in order to assist them in obtaining the facts necessary to make their rulings. The allegations of the petitioners only demonstrate that the district court has made procedural rulings, and that the appellate court refused to reverse the district court.

3. This civil cause has yet to be decided on the merits. Because the petitioners took issue with the rulings made by the district court, they filed a motion seeking to have the district court judge recuse himself, alleging that the basis for the district court's rulings was the judge's personal bias. The district court judge issued an order, which is contained in the appendix to the petition for *writ of certiorari*, setting forth the reasons for denial of the motion seeking his recusal.

4. The petitioners then filed a petition for writ of mandamus with the United States Court of Appeals for the Seventh Circuit, repeating the allegations made in their motion before the district court. The Seventh Circuit Court of Appeals, in an order dated November 8, 1993, denied the petition. The petitioners then sought a reconsideration by the Seventh Circuit Court of Appeals of its denial of their petition for a writ of mandamus. On December 3, 1993, the Seventh Circuit Court of Appeals denied the motion seeking reconsideration.

5. Mere error alone is not sufficient to invoke this Court's jurisdiction. The rulings are on procedural matters and the petitioner still will be afforded a decision on the merits. If an adverse decision on the merits is rendered by the district court, the petitioners can appeal on the merits.

THEREFORE, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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